

## **REPORT TO THE HEALTH AND HUMAN SERVICES COMMITTEE AND THE MEDICAID REFORM COUNCIL**

### **RECOMMENDATIONS FOR MEDICAID INSURANCE FOR WORKERS WITH DISABILITIES (MIWD) COVERAGE**

Legislative Bill 928 of the 2008 Nebraska Legislature tasked the Department of Health and Human Services with the following responsibility in section 16, subdivision (2) (a):

“The Department shall develop recommendations based on a comprehensive analysis of various options available to the state under applicable federal law for the provision of medical assistance to persons with disabilities who are employed, including persons with a medically improved disability, to enhance and replace current eligibility provisions contained in subdivision 8 of section 68-915.”

This report is in response to the above legislative directive.

#### **Background**

In order to evaluate options, it is important to review the purpose of Medicaid Buy-In and the state and federal actions preceding LB 928.

According to national advocacy organizations, many adults with disabilities hesitate to start or return to work because they fear they will lose Medicaid benefits and then be unable to obtain adequate health insurance coverage through their employer. With Medicaid Buy-In coverage, working people with disabilities can buy into their state’s Medicaid program, as though they were purchasing private health care coverage. This means that individuals who are eligible to participate in a buy-in can work, benefit from higher income levels, and still retain Medicaid coverage. Without access to coverage, individuals with disabilities may avoid or limit earned income in order to remain Medicaid-eligible.

In 1997, the Federal government passed the Balanced Budget Act (BBA), which allows states to provide Medicaid coverage to working individuals with disabilities who, because of their earnings, do not qualify for Medicaid under other statutory provisions. Section 4733 allows States to provide Medicaid coverage to such individuals by creating a new optional eligibility group. Nebraska was one of the first states to take advantage of this opportunity and developed what is currently known as Medicaid Insurance for Workers with Disabilities (MIWD) in 1999.

At the same time, the federal Ticket to Work and Work Incentive Improvement Act of 1999 (TWWIIA) created two optional Medicaid eligibility groups: a basic coverage group and a “medically improved” group. This legislation provided more flexibility than the BBA for states to develop avenues for individuals with disabilities to work while maintaining Medicaid coverage. Nebraska has not adopted TWWIIA provisions.

TWWIIA legislation allowed states to recognize a “medically improved” category to address a catch-22 which causes individuals to cycle on and off Medicaid. Medically improved individuals lose eligibility because their medical condition has improved to the point where it is determined, at the time of a continuing disability review, that they are no longer disabled as Supplemental Security Income (SSI) defines the term. Individuals with medical conditions such as mental illness or HIV/AIDS illustrate this phenomenon. While their illness is effectively controlled through medication and treatment, they become asymptomatic and are able to be gainfully employed. As their earnings increase to the level identified as Substantial Gainful Activity, their Social Security disability status is revoked along with the associated access to Medicaid. Without continuous access to medical care and treatment, the symptoms of the disability resurface and interfere with continued employment.

A comparison of key features of the two federal acts, BBA and TWWIIA, is outlined below. The BBA is less restrictive in terms of age and treatment of earned income, while TWWIIA provides flexibility in terms of treatment of unearned income and resource limits and recognizes the Medically Improved Group.

<b>BBA*</b>	<b>TWWIIA</b>
○ SSI definition of disability	○ SSI definition of disability
○ No age restrictions	○ Ages 16-64
○ Earned income automatically disregarded	○ Earned income not automatically disregarded
○ Unearned income limit not to exceed Federal Benefit Rate (FBR)	○ Unearned income limit established by the state
○ Resource limit not to exceed SSI resource standard	○ Resource limit established by the state
○ No Medically Improved Group	○ Medically Improved Group available
○ No premium limit	○ Premium capped at 7.5% of earned income

\* Certain BBA features can be modified through the Medicaid State Plan process

Historically, individuals with disabilities and their advocates have petitioned the Nebraska Unicameral to redesign the current MIWD program to take advantage of the flexibility of TWWIIA. However, the cost estimates attached to proposed legislation were significant. While the Department of Health and Human Services supports individuals with disabilities in their effort to work, we recognize the need for fiscal restraint at a time when efforts are being made to contain the Medicaid Program’s growth to ensure Medicaid’s future sustainability.

## **Nebraska's Current Medicaid Buy-In Coverage (MIWD)**

Nebraska uses a two-step process for eligibility determination, as required by the BBA. We first compare an individual's unearned income to the Federal Benefit Rate of \$637 per month. (All unearned income is disregarded while the individual is in a trial work period.) If the individual qualifies based on unearned income, then total family income must be considered. If the total family income falls below 250% of the Federal Poverty Level (FPL), the individual is eligible for assistance under MIWD. If the individual's income is between 200% and 250% FPL, a graduated premium is paid by the individual not to exceed 7.5% of earned income. A detailed description of the two-step process follows below:

### **Test A Income Steps**

1. Disregard all the disabled individual's **EARNED** income.
2. Disregard all the disabled individual's **UNEARNED** income if they are in a trial work period. If not, all unearned income is counted.
3. Count the spouse's net earned income (\$65 + ½ disregarded).
  - If countable income is greater than Federal Benefit Rate (\$637) then **Not Eligible MIWD**.
  - If countable income is less than or equal to the Federal Benefit Rate (\$637) then **eligible to go to Test B**.

### **Test B Income Steps**

1. Disregard \$65 then ½ of the individual's earned income.
2. Review the individual's unearned income minus the \$20 general income disregard and the \$10 interest/dividend disregard.
  - If countable income is **EQUAL** to or **GREATER** than 250% of Federal Poverty Level then **Not MIWD eligible**.
  - If countable income is **LESS** than 200% of Federal Poverty Level then **eligible without monthly premium**.
  - If countable income is 200% to 250% of Federal Poverty Level then **eligible with a monthly premium**.

Note: Eligibility is reviewed monthly. Resource limits are \$4,000 for an individual and \$6,000 for a couple.

Application of the eligibility determination process is demonstrated through the following scenarios:

A single disabled individual receives monthly unearned income of \$800 from an annuity related to an injury settlement and would like to begin working. He does not have any work history and therefore does not receive Social Security

Disability Insurance (SSDI). This individual's countable earned income from working, combined with his annuity unearned income, would exceed the Medicaid eligibility income standard of 100% of the Federal Poverty Level (\$867 per month). The case is reviewed for MIWD eligibility. In test A, the employment earnings are disregarded but the unearned income exceeds the Federal Benefit Rate of \$637 and the individual fails test A. If this individual chooses not to work, he is eligible for Medicaid.

A single disabled individual was employed for 50 months and exhausted the trial work period from Social Security. That employment ended and the individual is now receiving SSDI based on work history and has begun new employment. The SSDI payment of \$800 is not disregarded in test A because the individual is no longer in a trial work period. The individual fails test A because the SSDI payment exceeds the Federal Benefit Rate of \$637. Again, this individual is eligible for Medicaid if not employed.

A single disabled individual receives a monthly SSDI payment of \$637 and starts a new job earning \$1,200 a month. The MIWD process disregards her earned income and compares her unearned to the Federal Benefit Rate of \$637. Since the unearned income in this case is not greater than the FBR, the eligibility process moves to test B. For test B, after applying allowable disregards, countable income is reduced to \$567.50 of earned income plus \$607 of unearned income for a total of \$1174.50. This amount is then compared to 250% of the Federal Poverty Level (\$2,167.50). Because the countable income is less than 250% FPL, the applicant is eligible for MIWD. Since her income is also less than 200% FPL (\$1,734), she will not be assessed a premium.

Approximately 100 persons are taking advantage of Nebraska's Medicaid Insurance for Workers with Disabilities each month. Participation may be relatively low due to the following factors:

- Nebraska's current MIWD eligibility compares countable income to the Federal Benefit Rate of \$637 per month, while eligibility for Medicaid in general for persons with disabilities compares income to the Federal Poverty Level of \$867 per month. Individuals who meet the higher income cutoff of \$867 per month for Medicaid eligibility may not also meet the lower income cutoff of \$637 for MIWD. Social Security Disability Income (SSDI) beneficiaries receive an average SSDI cash payment of \$800 per month and are, therefore, determined ineligible for MIWD (other than during a limited trial work period). Members of this group have a work history and are statistically more likely to return to work if enabled to do so. As a result of this variance in income level criteria, MIWD cannot effectively provide the intended transition to employment for the full group of Medicaid eligibles with disabilities.

- MIWD does not provide stable access to medical coverage because many participants have disabilities that may become medically improved to the point where these individuals are no longer determined disabled by federal SSI criteria. Once SSI revokes a disability determination because an individual is gainfully employed, Medicaid eligibility is also revoked. Without access to the medications and treatments that enable the individual's condition to be controlled, symptoms reappear and the capacity to work is jeopardized.

### **State Comparisons**

Many variations in Medicaid Buy-In provisions are possible. Depending upon the federal statute endorsed, a State can adjust income limits and disregards, resource limits, recognition of the medically improved population, definition of a family unit, and application of premiums. Thirty states offer buy-in programs and each program is somewhat unique. (Attachment A)

A comparison of the Medicaid Buy-In Programs in Nebraska's neighboring states follows below, based on information provided by the American Public Human Service Association:

**Colorado** has a standing moratorium on Medicaid expansion and does not currently offer Medicaid Buy-In.

**Iowa** initiated a buy-in under the BBA, and utilizes a 250% FPL net family income limit with a \$12,000 asset limit. Iowa's buy-in currently serves 11,939 individuals. Iowa did not apply a stringent work verification requirement initially and discovered that individuals who were not working were receiving benefits through the program. The State has taken corrective action to rectify this situation, including requiring FICA documentation, and has seen an improvement in work rates.

**Kansas** implemented a buy-in under TWWIIA, with 300% of FPL as the income cutoff and asset limits set at \$15,000. Like Minnesota, Kansas excludes the first \$65 of earned income. Kansas also requires that enrollees be employed at or above the federal minimum wage. Currently 1,033 people participate in the program, including seven individuals who are eligible under a Medically Improved Group.

**Minnesota** started a buy-in program under BBA but switched to TWWIIA in order to gain flexibility in the treatment of income. At the time of the switch, the individuals being served were well under 65 years of age so the age limit under TWWIIA was not a concern. However, Minnesota has now experienced an influx of older workers who will automatically lose buy-in eligibility on their 65th birthdays. Minnesota does not impose an upper income limit, excludes the first \$65 of earned income per SSI methodology and applies a \$20,000 asset limit. Currently, they have 7,022 individuals enrolled.

**Missouri** is in the process of creating a new program under TWWIIA in order to gain control of a buy-in program that once had 20,000 enrollees. The specific features of the Missouri program are not yet available through APhSA.

**South Dakota** developed a buy-in program under BBA, which compares income to 250% FPL with an \$8,000 resource cap. They use an unearned income limit of the Federal Benefit Rate plus \$20, but are considering changes to that limit. South Dakota enrollment is 72 people, which is typical for states with low unearned income caps.

**Wyoming** operates a buy-in under TWWIIA -- with a countable income limit of 300% FBR (\$1,911) and a resource limit of \$2,000. Wyoming serves 97 people in their program currently.

### **Options for Nebraska**

Modifications to address the primary limitations of Nebraska's existing MIWD coverage are presented below:

- **Increase unearned income disregard from \$637 (FBR) to \$867 (FPL) to make the MIWD employment option available to all Medicaid recipients with disabilities**

Under this modification, DHHS would first disregard earned income up to 100% FPL when determining eligibility for someone with a disability who has earnings. Then we would assess countable earned income against 250% FPL as our current Buy-In Program does. This change would make MIWD eligibility criteria consistent with other Medicaid categories and would allow Medicaid clients whose income falls between \$637 and \$867 per month to take advantage of MIWD provisions.

This modification has the advantage of opening up MIWD to a number of current Medicaid clients who are unable to participate in this work incentive due to income. An estimated 5,275 current Medicaid clients with disabilities have unearned income levels between \$637 and \$867 per month.

To the extent that this modification allows individuals who are already Medicaid eligible to move into employment without losing Medicaid coverage, there would be no immediate fiscal impact to the Medicaid Program. Those who are currently eligible would remain eligible.

The potential also exists for new costs to Medicaid, since an increase in the income cutoff would allow and could incentivize persons who are not currently accessing Medicaid to do so through modified MIWD criteria. DHHS is unable to identify reliable data to estimate this impact.

- **Adopt TWWIIA federal language and recognize the Medically Improved Category**

Under this modification, DHHS would create a process to disregard certain work and earnings data for persons whose disability conditions are controlled by ongoing medication and treatment. The Centers for Medicare and Medicaid Services (CMS) has not yet released guidelines for medically improved coverage. Eight states have initiated coverage for a Medically Improved Group independent of federal guidelines. Enrollment to date in these states has been low due to unfamiliarity with the coverage and uncertainty about federal actions.

As an alternative, Nebraska may be able to extend coverage to a portion of the Medically Improved Group under BBA provisions. This modification would be accomplished by adapting a secondary state review process to disregard certain work and earnings information used in federal disability reviews. The State Review Team could then override the federal determination under certain circumstances in order to maintain Medicaid eligibility for individuals whose condition is medically improved. The State of Oregon has successfully utilized this approach.

This option would increase Medicaid coverage to persons who are currently not eligible. Again, DHHS is unable to identify reliable data to estimate this impact.

- **Continue existing Medicaid Insurance for Workers with Disabilities Coverage**

Under this option, no modifications would be made to Nebraska's existing MIWD criteria.

### **Recommendation**

Any enhancement to Nebraska's existing MIWD coverage holds the potential to increase Medicaid expenditures. It may cause persons who are not already enrolled in the Medicaid program to become Medicaid eligible. DHHS cannot guarantee that any change will be cost neutral for the Medicaid Program and is unable to estimate what the cost impact will be. The goal of Medicaid Reform is to ensure the Medicaid program is fiscally sustainable into the future by slowing the rate of growth. Expanding the existing MIWD coverage is contrary to the goal of Medicaid Reform.